

JOY H. GOODALE

IBLA 74-335

Decided November 12, 1974

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM 21472.

Affirmed.

1. Administrative Practice – Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the names of additional parties in interest and the required statement of additional parties' interests and qualifications is not filed within the time required by 43 CFR 3102.7. The offeror is not retroactively excused from submitting the required statement of interests where an additional party listed on the entry card subsequently agrees to convey his offer and lease interests to the offeror.

APPEARANCES: Jeffrey H. Hubbard, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Joy H. Goodale has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 14, 1974, rejecting her noncompetitive oil and gas lease offer NM 21472 for the reason that the statement of interest required by 43 CFR 3102.7 to be signed and filed by all parties in interest in the offer was not filed.

On March 19, 1974, appellant filed an entry card as an offer to lease oil and gas lands available in a simultaneous filing procedure conducted pursuant to 43 CFR Subpart 3112. The period for

simultaneous filing ended on March 25, 1974. Appellant's offer won first priority in a drawing held on April 9, 1974. On the reverse side of her entry card, appellant listed Drue M. Goodale and Mark H. Goodale as "OTHER PARTIES IN INTEREST." The reverse side of the entry card has the following notice conspicuously printed:

Other parties in interest - All interested parties must furnish evidence of their qualifications to hold such lease interest. See 43 CFR 3102.7.

The cited regulation provides the following:

* * * If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. * * *

It is well established that the requirements of 43 CFR 3102.7 are mandatory and that an offer not in compliance with the regulation must be rejected. D. O. Keon, 17 IBLA 81 (1974); James V. Orbe, 16 IBLA 363 (1974). To remove herself from the general rule, appellant states the following:

* * * Mrs. Joy H. Goodale listed her husband, Drue M. Goodale and her son, Mark H. Goodale both of whom were fully qualified as lessees on the reverse of her offer, it being her intention that each would share equally in any lease; that is, each would have a one-third interest. Subsequent to her filing, the Goodales entered into a certain property settlement agreement and were divorced and all right title and interest in the aforesaid offer and any subsequent lease to be granted in connection therewith was awarded to Mrs. Joy H. Goodale and consequently at all times material hereto, there was no other party to the offer to lease other than Mrs. Joy H. Goodale. * * *

Subsequently, Mrs. Joy H. Goodale discussed the situation with * * * a representative of [BLM], who advised that all appeared to be in order, but that in

the event it was necessary to make any changes on the Entry Card, that is, delete other parties in interest, Mrs. Goodale would be afforded fifteen days from date of notification in which to make any necessary change. In reasonable reliance thereon, Mrs. Goodale * * * forwarded a cashier's check * * * in the amount of \$1,280 for the first year's rental * * *.

We are not persuaded that these facts relieved appellant from the consequences of not complying with the regulation. To some extent, this case is similar to the situation presented in Eugene Prato, 5 IBLA 87 (1972). In the Prato case, the offeror, Eugene Prato, stated in his offer that Marguerite Prato, his wife, was a party in interest in the offer and prospective lease. The required statement of interest, however, was not filed. Appellant argued that at the time he filed the drawing card, he was under the impression that it was necessary to list his wife as a party in interest since she shared fifty percent of his assets. He was later informed that he was not required to list his wife as a party in interest. ^{1/} We held that since, at the time the entry card was filed, the offeror both indicated and intended that his spouse was to have an interest in the offer and lease, he was required to file a statement of interest within the period allowed by the regulation. Since it was not filed, the offer became defective. Eugene Prato, *supra* at 89; See also Harvey v. Udall, 384 F.2d 883 (10th Cir. 1967); Timothy G. Lowry, A-30487 (March 16, 1966).

The only distinguishing feature about the present case is that subsequent to filing her entry card, appellant entered into a settlement agreement which granted her exclusive rights with regard to the lease offer and prospective lease.

^{1/} In footnote 1 in Eugene Prato, *supra* at 88, we stated the following:

This Department has ruled that husbands and wives may each hold, in his or her own right, the maximum acreage in oil and gas leases authorized for an individual or association in any one State, and that in the absence of any evidence that a husband and wife actually represent a common business interest and that the statement made by each in an offer that he is the sole party in interest is not true, the offers will be accepted. Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964), sustained in McIntosh v. Udall, Civil No. 1522-64, D.D.C., June 29, 1965.

If, however, the husband and wife are to share jointly in the offer and have a common business purpose, they both should file the statement as parties

We note that appellant does not give the date of this agreement. In a letter to the State Office, dated May 13, 1974, appellant stated her concern about not having received official notification that her entry card was drawn, but at no point did she advert to the agreement, indicating that as of that time, at least, the property settlement had not been executed. May 13, 1974, of course, is well after the end of the 15-day period required by the regulation for filing a statement of interest.

Relying upon the property settlement agreement, appellant argues that at all times material to the leasing procedure there were not other parties in interest to the offer, thus obviating the need to submit a statement of interest. This argument is without merit. However, even if the property settlement had been entered into prior to the drawing the result would be the same.

[1] A similar argument was presented and rejected in Timothy G. Lowry, supra. Lowry contended on appeal that at the time of the entry card filing, his wife, whose name he had included as a party in interest, was not in fact a party in interest despite his statement on the entry card. The Department held that subsequent discovery of the error could not retroactively excuse appellant's failure to submit the required statement. The present case is even stronger than Lowry because appellant not only stated but intended that her husband and son were to be parties in interest. The fact that her husband may have been subsequently bound by agreement to convey his interest to appellant ^{2/} cannot retroactively excuse appellant's failure to submit the information required by the pertinent regulation. The Department must take an offer as it is filed in determining whether or not it meets the requirements of the regulations. Eugene Prato, supra; E. S. Lippert, A-31173 (May 14, 1970); Lorraine Lafiner, A-31002 (May 16, 1969); Timothy G. Lowry, supra. As was stated in Lafiner, supra at 3:

The fact here is that an offer was received in the land office which showed on its face that its

fn. 1 (continued)

in interest. The fact this Department will not infer such a common purpose from their marital relationship alone does not preclude them from showing such joint interests.

^{2/} It appears from appellant's statement on appeal that the property settlement agreement was between appellant and her spouse. Thus, even assuming, arguendo, that there is some validity to appellant's argument, she has not established that her son conveyed his interest to her. An additional party in interest, therefore, still existed.

validity depended on the filing of a statement of interest within 15 days. When no statement was filed within the 15-day period, the invalidity of the offer was established and its rejection was required under the mandatory provisions of the applicable regulations.

Accordingly, appellant's lease offer was properly rejected for the deficiency noted. See also D. O. Keon, supra; James V. Orbe, supra.

Appellant argues, however, that she was advised by the BLM that in the event there was any error on the entry card, she would be afforded 15 days following notification to amend her offer. This is not the law. In a simultaneous filing procedure, deficiencies may not be corrected after the 15-day period allowed for filing a statement of interest has expired. James V. Orbe, supra. Despite the advice received by appellant, rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management. Gordon R. Epperson, 16 IBLA 60, 64 (1974). Nor does the fact that appellant voluntarily tendered advance rental payment create in her a right to the lease. James V. Orbe, supra. The advance rental payment will be refunded to appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur.

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

